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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 CHRISTOPHER LOONEY,

11 Petitioner,

12 v.

13 ELDON VAIL,

14 Respondent.  
15

Case No. C09-5238RBL

ORDER

16 This matter is before the court on Petitioner's motion to stay the matter, which was filed  
17 along with the underlying Petition and application to proceed *in forma pauperis*. The motion to  
18 stay is based on Petitioner's admission that he is currently seeking exhaustion of certain claims  
19 in the state court, and thus, the Petition as currently presented is "mixed" in that it contains both  
20 exhausted and unexhausted claims.

21 Having reviewed the record, the court finds and orders as follows.

22 1. District courts may use a "stay-and-abeyance" procedure in which the court dismisses  
23 the unexhausted claims while staying the remaining exhausted claims. Rhines v. Weber, 544  
24 U.S. 269, 275-77; Calderon v. United States District Court (Taylor), 134 F.3d 981, 988 (9th  
25 Cir.1998). Once the petitioner has exhausted the previously unexhausted claims in state court,  
26 the court may allow the petitioner to amend the original federal petition by adding the newly  
exhausted claims, which "relate back" to the original petition, pursuant to Fed. R. Civ. P. 15(c).

ORDER - 1

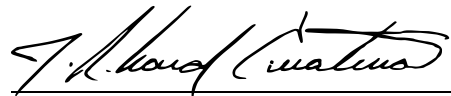
1 Kelly v. Small, 315 F.3d 1063, 1070 (9th Cir.2003). This procedure assumes special importance  
2 in light of AEDPA's one-year statute of limitations, and it advances our policy of deciding cases  
3 on the merits, rather than on procedural grounds. James v. Pliler, 269 F.3d 1124, 1126 (9th Cir.  
4 2001).

5 2. The court finds good cause to have been shown to warrant use of the “stay and  
6 abeyance” procedure in this matter, which will allow petitioner time to properly exhaust all the  
7 claim(s) he is raising in his Petition. Following the guidelines noted above, the court GRANTS  
8 petitioner’s motion to stay and the exhausted claims will be held in abeyance for a reasonable  
9 period of time.

10 3. Accordingly, the court directs petitioner to serve and file a status report by no later  
11 than October 22, 2009, or sooner if the state issues a decision on the matter. The report must  
12 explain the current status of those state court matters/cases in which he is pursuing his state  
13 remedies. The report shall also contain a statement indicating when petitioner expects to  
14 complete the exhaustion process for each pending state claim. After Petitioner reports that the  
15 state court process is complete the court will direct respondent to answer the Petition.

16 4. The Clerk shall direct copies of this Order to petitioner and to counsel of record.

17 DATED this 6<sup>th</sup> day of May, 2009.

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21 J. Richard Creatura  
22 United States Magistrate Judge  
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